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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,300	12/21/2001	Brian Harvey	1238-0006	8091

7590 06/11/2003
Michael Diaz
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Suite 200
Plano, TX 75074

EXAMINER

BURNHAM, SARAH C

ART UNIT PAPER NUMBER

3636

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/026,300

Applicant(s)

HARVEY, BRIAN

Examiner

Sarah C. Burnham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 24 March 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 24 March 2003 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.
 2. The Patent and Trademark Office no longer makes drawing changes. See 1017 O.G. 4. It is applicant's responsibility to ensure that the drawings are corrected.
- Corrections must be made in accordance with the instructions below.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

– Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

– Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the

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new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

– **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.185(a). Failure to take corrective action within the set (or extended) period will result in **ABANDONMENT** of the application

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- ok – In line 9 of claim 15, it appears as if the word “third” should be inserted between the first instance of the word “the” and the word “leg”.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claim 8 is rejected as best understood with the above cited indefiniteness under 35 U.S.C. 102(b) as being anticipated by Syler (3,232,686). Syler discloses a portable seat assembly (A) comprising a horizontal surface (11) and four support legs (12). A basket (20) is slidably mounted to an underside (unlabeled) of horizontal surface (11). Basket (20) comprises a bottom surface (22) and four generally vertical side walls (21). Two overhanging side edges (42) extend from a top portion (unlabeled) of two side walls (21). A means for slidably supporting (52) the two overhanging edges (42) is set in the underside (unlabeled) of horizontal surface (11). Basket (20) may be slid forward and aft as shown by the solid and phantom lines drawn in Figure 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-3, 6 and 8-9 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694). Cairo discloses a portable seat assembly (10) having a horizontal surface (11) with a plurality of holes (30). Horizontal surface (11) is supported by a first support (unlabeled) and a second support (unlabeled). First support (unlabeled) is comprised of a first leg (13), a second leg (13), and a first brace support (a single cross bar of element 15). Second support (unlabeled) is comprised of a third

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leg (13), a fourth leg (13) and a second brace support (the other cross bar of element 15). Second brace support (unlabeled) and first brace support (unlabeled) lay diagonally across each other on an underside (unlabeled) of horizontal surface (11). Cairo does not disclose a basket slidably mounted to the underside of horizontal surface (11).

Ulm teaches the use of a slidable basket (31) for mounting to an underside (unlabeled) of a horizontal surface (11) by way of brackets (17). Basket (10) comprises a generally horizontal bottom surface (33) and four generally vertical sides (34)(35)(36)(37). Two overhanging edges (32) extend outwardly from a top portion (unlabeled) of two opposing sides (34)(35). A means for slidably supporting the two overhanging edges (13) includes two guide rails (15)(16). Each guide rail (15)(16) has a lip (55) to support overhanging edges (13). The means for slidably supporting (15)(16) is hung below horizontal surface (11) by way of brackets (17). The basket can be slid out to either side of the horizontal surface (11) (column 1, lines 39-40).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to hang basket assembly (10) taught by Ulm, from the horizontal surface (11) revealed by Cairo. Such an addition provide easy access to shower supplies for the seat occupant. Additionally, it would allow the seat occupant to keep shower supplies off the shower floor, thereby preventing accidental slips and falls due to supplies obstructing the shower floor.

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9. Claims 4-5 and 15 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694), as applied to claim 1 above, and in further view of Gates (1,856,847). As presented above, Cairo, as modified, shows all claimed elements except an adjustable rod for affixing said basket to an edge of said horizontal surface.

Gates teaches the use of an article holder (Figure 1) for attachment to "an edge of a table." (lines 3-4). The device is adjustable in that it can be located anywhere along a horizontal edge. Table plate (10) would rest on top of horizontal surface (11), lower end (13) of supporting arm (12) would hook onto an overhanging edge (13) of basket (31).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Cairo, as modified, with the addition of the article holder taught by Gates. The addition of such an article holder "avoids the necessity of attempting to hold [articles]" (lines 46-48) and therefore aids in the avoidance of dropping and spilling items while in the shower.

10. Claims 7 and 10 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694), as applied to claims 1 and 8 above, and in further view of Stanek (5,640,723). As disclosed above, Cairo, as modified, discloses all claimed elements with the exception of a basket having holes in it.

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Stanek teaches the use of a basket (20) having holes (110) for use with a shower seat (Figure 1).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to add holes (110), as taught by Stanek, to the basket (31) revealed by Cairo, as modified. Such an addition would allow water to drain out the basket (31) if it were placed in the shower and secondly it would allow for ventilation to assist in the drying out of the contents of the basket (31) if they were to get wet.

11. Claims 11 and 12 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694) in further view of Stanek (5,640,723), as applied to claim 10 above, and still in further view of Gates (1,856,847). As presented above, Cairo, as modified, shows all claimed elements except an adjustable rod for affixing said basket to an edge of said horizontal surface.

Gates teaches the use of an article holder (Figure 1) for attachment to "an edge of a table." (lines 3-4). The device is adjustable in that it can be located anywhere along a horizontal edge. Table plate (10) would rest on top of horizontal surface (11), lower end (13) of supporting arm (12) would hook onto an overhanging edge (13) of basket (31).

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Cairo, as modified, with the addition of the article holder taught by Gates. The addition of such an article holder "avoids the necessity of

attempting to hold [articles]" (lines 46-48) and therefore aids in the avoidance of dropping and spilling items while in the shower.

12. Claims 13 and 14 are rejected as best understood with the above cited indefiniteness under 35 U.S.C. 103(a) as being unpatentable over Cairo (4,489,448) in view of Ulm (2,885,694), and in further view of Hines (5,096,249). As presented above, Cairo, as modified, shows all claimed elements except a cover.

Hines teaches the use of a cover (24) which is pivotally mounted at hinge (30) to an underside of a horizontal surface (bottom of seat 12). Figure 4 reveals how when drawer (10) is slid out from beneath seat (12), cover (24) can be pivoted up.

It would have been obvious to one of ordinary skill in the art at the time of the instant invention to modify Cairo, as modified, with an addition of a pivotal cover as taught by Hines. Such an addition would prevent water from entering the basket beneath the horizontal surface (11). Additionally, cover (24) could be latched to the basket by the use of a conventional lock (column 3, lines 17-18) to prevent children from accessing potentially harmful bathroom related products.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to shower seats and slidable storage units in general:

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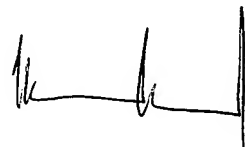
- Swain (4,140,355)
- Fitzgerald (2,652,887)
- Johnston (583,752)
- Lipski (4,656,678)
- Simpson (4,811,438)
- Wagner (6,074,000)

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 703-305-7315. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 703-308-1020. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-1113.

SCB
June 5, 2003



Milton Nelson, Jr.
Primary Examiner